IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1144 OF 1997

IN

NOTICE OF MOTION NO.1181 OF 1997

IN

S.C.SUIT NO.1103 OF 1997

WITH

CIVIL APPLICATION NO.6616 OF 1997

AND

CIVIL APPLICATION NO.6790 OF 1997

Smt.Margarate Maria Gojer ...Appellant

Versus

Mr.Edward Jayakar Andrews & Ors. ...Respondents

.....

Ms.S.P.Bharti for Appellant.

None for Respondents.

.....

CORAM: A.M.KHANWILKAR, J.

MARCH 21, 2006.

P.C.

1. Heard Counsel for the Appellant. None

appears for the Respondents though served.

2. This Appeal from Order takes exception to the Judgment and Order passed by the City Civil Court, Bombay dated 6th and 7th May 1997 below Notice of Motion No.1181 of 1997 in Short Cause Suit No.1103 of 1997. By the impugned order, the Trial Court dismissed the Notice of Motion taken out by the Appellant. In the Notice of Motion, several reliefs were claimed. Amongst others, stay of execution of preliminary decree dated 3rd December 1996 in S.C.Suit No.4211 of 1996; appointment of Court Receiver in respect of the suit business and the suit premises and the Appellant be appointed as agent of the Court Receiver; the Defendants, their agents, servants or any person/s claiming through them be restrained by an order and injunction of this Court from dealing with or disposing of any material of the suit business and the suit premises in whatsoever manner, and lastly, the Defendants, their servants, agents or any person/s claiming through them be restrained by an order and injunction of this Court from dispossesing the Appellant and her legal and

juridical possession in the suit business and also in the suit premises except otherwise than in due course of law acting in pursuance of the preliminary decree dated 3rd December 1996 in S.C.Suit No.4211 of 1996 in whatsoever manner.

3. As mentioned earlier, the said Notice of Motion came to be dismissed on the finding recorded against the Appellant. Indeed, the Appellant carried the matter in Appeal before this Court. This Court while entertaining the Appeal by order dated 20th October 1997, had granted ad-interim relief in favour of the Appellant in terms of prayer clause (b) which reads thus:

> "(b) That pending the hearing and final disposal of Appeal, this Hon'ble Court be pleased to stay the operation and implementation of impugned order dated 6/7.5.1997 being E.'A' to Appeal".

3. This order does not take the matter any further insofar as Appellant is concerned. In fact, the reliefs claimed by the Appellant before the Trial Court in the Notice of Motion have been

rejected in toto, except the limited direction given against the Defendant No.8 not to part with possession of the partnership premises or to create any third party right for a period of seven months from the date of impugned order.

4. The Suit pertains to year 1997. In all probability, Suit must have been disposed of by now. Even if the Suit has not been disposed of, at this distance of time, it is wholly unnecessary to go into the contentious issues raised in the present Appeal. Instead, keeping all the questions open, this Appeal and the accompanying Civil Application is disposed of with direction to the Trial Judge to dispose of the Suit as High Court expedited Suit, preferably by end of September 2006, if pending. This order is passed on the assumption that the Suit is still pending. It is, however, made clear that if there is any other Suit older than the present Suit pending before the same Trial Judge, which is expedited by order of High Court or the Supreme Court, the same shall be given precedence and soon thereafter, the present Suit may be heard and disposed of, keeping in mind the

outer limit provided in this order before end of September 2006.

5. All questions in the said Suit are left open to be decided on its own merits in accordance with law, uninfluenced by the observations made in the impugned order, or for that matter, the present order.

6. Appeal and the cognate Civil Applications disposed of on the above terms.

A.M.KHANWILKAR, J.